

BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

LAND USE COMMISSION  
STATE OF HAWAII  
2016 NOV -4 A 11:45

In the Matter of the Petition of	)	DOCKET NO. DR16-57
	)	
UNIVERSITY OF HAWAI'I	)	UNIVERSITY OF HAWAI'I
COMMUNITY COLLEGES	)	COMMUNITY COLLEGES'
	)	PETITION FOR DECLARATORY
To Amend the Agricultural Land Use	)	ORDER; EXHIBIT 1; CERTIFICATE
District Boundary into the Urban District for	)	OF SERVICE
approximately 148.37 acres at Puhi, Lihu'e,	)	
Island of Kaua'i, State of Hawai'i,	)	
TMK: (4) 3-4-07:01, 02, 03, and 06.	)	
	)	

PETITIONER UNIVERSITY OF HAWAI'I COMMUNITY COLLEGES' PETITION FOR  
DECLARATORY ORDER

COMES NOW UNIVERSITY OF HAWAI'I COMMUNITY COLLEGES  
("UHCC"), Petitioner, by and through its agent WILSON OKAMOTO CORPORATION and  
respectfully submits its Petition for Declaratory Order, pursuant to Hawai'i Administrative Rules  
("HAR") §15-15-99, to waive the requirement contained in HAR §15-15-50(c)(20) that  
Petitioner submit a schedule and a map for development of the project in increments in order that  
Petitioner may request to the Commission to redistrict the entire property as set forth in HAR  
§15-15-78(a)(1).

The contents requirements for Petitioner's declaratory order pursuant to HAR  
§15-15-99 are as follows:

1. Name, Address and Telephone Number of Petitioner.

University of Hawai'i  
Community Colleges  
2327 Dole Street

Honolulu, HI 96822

Contacts:

Ms. Denise Yoshimori-Yamamoto, (808) 956-8373

Mr. Brandon Shimokawa, (808) 245-8311 ext. 230

Mr. Michael Unebesami, (808) 956-6280

2. Signature of Each Petitioner. This petition is signed by Petitioner's duly authorized agent.

3. Rules in Question. HAR §15-15-50(c)(20) and HAR §15-15-78(a)(1).

4. Statement of Petitioner's Interest. On 26 September 2016, Petitioner filed a Petition to Amend the Land Use District Boundaries to reclassify approximately 148.37 acres of land from an overall project area of approximately 199 acres of land at Puhi, Līhu'e District, Kaua'i, Hawai'i, identified as Kaua'i Tax Map Key Nos. (4) 3-4-07:01, 02, 03, and 06 (the "Petition Area") from the its current State Land Use Agricultural District to the State Land Use Urban District for the Kaua'i Community College campus ("KCC"). The proposed project is the eventual development of the KCC campus, generally following land-use allocations recommended by the Ultimate Site Plan presented in the KCC's LRDP (See Exhibit "1"). KCC is presently updating its LRDP and in the process has developed a draft Preferred Site Plan based on a student population of 1,500 FTE (See Exhibit "1"). This plan has yet to be finalized and adopted.

5. Statement of Petitioner's Position. Petitioner has applied to redistrict the entire Petition Area as set forth in HR §15-15-78(a)(1). Petitioner seeks a waiver of the requirement contained in HAR §15-15-50(c)(20) that Petitioner submit a schedule and a map for development of the project in increments. Petitioner intends to develop subsequent facilities on

the Petition Area as the population of the surrounding community grows and public funds become available.

6. Memorandum in Support Containing the Reasons and Legal Authorities

In Support of the Petition. Petitioner's Memorandum in Support of the Petition is attached.

DATED: Honolulu, Hawai'i 11/3/2010.

  
WILSON OKAMOTO CORPORATION  
Agent for Petitioner

PETITIONER UNIVERSITY OF HAWAI'I COMMUNITY COLLEGES' MEMORANDUM  
IN SUPPORT OF PETITION FOR DECLARATORY ORDER

COMES NOW UNIVERSITY OF HAWAI'I COMMUNITY COLLEGES

("UHCC"), Petitioner, by and through its agent WILSON OKAMOTO CORPORATION and respectfully submits its Memorandum In Support of Petition for Declaratory Order, pursuant to Hawai'i Administrative Rules §15-15-99, to waive the requirement contained in HAR §15-15-50(c)(20) that Petitioner submit a schedule and a map for development of the Project in increments due to Petitioner's inability to forecast the availability of public funds and community population growth prior to obtaining land use entitlements and to redistrict the entire Petition Area as Set forth in HAR §15-15-78(a)(1).

A. BACKGROUND

On 11 November 2016, Petitioner filed a Petition to amend the Land Use District Boundaries to reclassify approximately reclassify approximately 148.37 acres of land from an overall project area of approximately 199 acres of land at Puhi, Līhu'e District, Kaua'i, Hawai'i, identified as Kaua'i Tax Map Key Nos. (4) 3-4-07:01, 02, 03, and 06 (the "Petition Area") from the its current State Land Use Agricultural District to the State Land Use Urban District for the Kaua'i Community College campus ("KCC"). Petitioner included a Final Environmental Assessment (the "FEA") as Exhibit 1 to the Petition.

Petitioner intends to develop and construct the Project in several phases. The Petition Area will be used and developed in the future in accordance with the KCC Long Range Development Plan ("LRDP") which proposes the development of the existing KCC campus site to accommodate a population of 3,000 full time equivalent ("FTE") students with an interim phase of 1,500 FTE students. Development of the existing campus was permitted through a

Special Permit granted by the State Land Use Commission. Subsequent phasing will involve campus expansion on an in-fill basis within the existing campus footprint. The proposed project is the eventual development of the KCC campus, generally following land-use allocations recommended by the Ultimate Site Plan presented in the KCC's LRDP (See Exhibit "1"). KCC is presently updating its LRDP and in the process has developed a draft Preferred Site Plan based on a student population of 1,500 FTE (See Exhibit "1"). This plan has yet to be finalized and adopted.

Re-designating the KCC campus from the State Agricultural District to the Urban District would be appropriate for existing and planned campus programs. Petitioner requests that the Petition be exempted from the requirements for a time schedule and a map of development in increments set forth in HAR §15-15-50(c)(20) due to Petitioner's inability to forecast the community population growth and the availability of public funds at the present time. Petitioner is requesting that the entire Petition Area be re-classified to the Urban District pursuant to HAR §15-15-78(a)(1) during the boundary amendment process.

#### B. DISCUSSION

HAR §15-15-50(c)(20) requires that a petition for reclassification to the Urban District include a plan for incremental development if the project can not be substantially completed within ten years from Commission approval, and each increment cannot be longer than a ten-year period. Petitioner proposes to develop complete campus facilities for a school population of approximately 3,000 full time equivalent ("FTE") students. Petitioner cannot conclusively determine at this time when the Kaua'i student population will increase sufficiently to justify construction of the additional classrooms and facilities or when funding will be obtained pursue future phased improvements. Insofar as Petitioner intends to develop



infrastructure and conduct rough grading and site work on the entire Petition Area in a single phase, it is impractical for Petitioner to provide an incremental site plan or time schedule for the Project.

HAR §15-15-34(b) provides that “[f]or good cause shown the Commission may waive or suspend any rule. No rule relating to jurisdictional matters shall be waived or suspended by the commission.” The time schedule requirement for HAR §15-15-50(c)(20) is not jurisdictional. Therefore, the Commission is authorized to waive the time schedule requirement if good cause is shown. Petitioner believes that good cause is present here given that Petitioner will be providing the only community college to serve Kaua‘i. Due to Petitioner’s plans to develop the entire Petition Area, the difficulty of predicting population growth creating the demand for additional classrooms and other school facilities, including dormitories, and the uncertain availability of public funding, it is impossible for Petitioner to provide a definitive time schedule or a map sufficient to develop the Petition Area in increments.

Petitioner’s request is consistent with HAR §15-15-50(c)(8) which requires that petitions for district boundary amendments include financial statements and a description of project funding, but expressly waives the financial reporting requirements for State and County agencies in recognition of the unique nature and limitations associated with the funding of government projects.

HAR §15-15-78(a)(1) permits the Commission to reclassify the entire Petition Area if it appears to the Commission that full development of the Petition Area cannot be substantially completed within ten years after the date of the Commission’s approval and that the incremental development plan can be substantially completed, and if the Commission is satisfied that all other pertinent criteria for redistricting the premises are present. In this case, not only can

the plan be substantially completed, but Petitioner intends to develop the entire Petition Area into a functioning community college with a capacity to serve perhaps 3,000 students planned for Phase I. Phase II of the Project simply expands the capacity of the college on an infill basis to accommodate the growing Kaua'i population. It would therefore be appropriate to reclassify the entire Petition Area to the Urban District in a single phase. All other pertinent criteria for redistricting are addressed in the FEA and the Petition.

C. CONCLUSION

Petitioner respectfully requests that the State of Hawai'i, Land Use Commission issue an order waiving the time schedule and map requirements of HAR §15-15-50(c)(20) due to Petitioner's inability to forecast the rate of community population growth and availability of public funds at the present time.

DATED: Honolulu, Hawai'i 11/3/2016.

  
WILSON OKAMOTO  
Agent for Petitioner

EXHIBIT 1 (FEA)

(PLEASE CROSS REFERENCE AND USE LUC DOCKET#A16-801 UNIVERSITY OF HAWAII COMMUNITY  
COLLEGES (KAUA'I) EXHIBIT #3)

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TMK: (4) 3-4-07:01, 02, 03, and 06.	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that a file-marked of the foregoing document was duly served  
upon the following VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED on  
\_\_\_\_\_, 2016.

LEO ASUNCION, Director  
Office of Planning, State of Hawaii  
235 South Beretania Street  
6<sup>th</sup> Floor, Leiopapa A Kamehameha  
Honolulu, Hawaii 96813

BRIAN C. YEE, ESQ.  
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MICHAEL DAHILIG, Director  
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Office of the County Attorney  
4444 Rice Street, Suite 220

Lihue, Kaua`i, Hawai`i 96766

KAUAI COUNTY PLANNING COMMISSION  
c/o Planning Department, County of Kauai  
4444 Rice Street  
Lihue, Kaua`i, Hawai`i 96766

DATED: Honolulu, Hawai`i, 11/3/2016.

A handwritten signature in black ink, appearing to read "Earl Matsukawa", written over a horizontal line.

Earl Matsukawa  
Agent for Petitioner  
UNIVERSITY OF HAWAI'I COMMUNITY COLLEGES